530-Z-94-008

Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231, 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–049 is added to read as follows:

§ 165.T01–049 Safety Zone: Onset, MA. Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters of Onset Harbor, MA., from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13' North and 70 degrees 39.83' West then northwest to the mouth of Sunset Cove.

(b) *Effective date.* This section becomes effective at 9 p.m. on July 2, 1994. It terminates at 10 p.m. on July 2, 1994, unless terminated sooner or by the Captain of the Port. In the event of inclement weather, this section will be in effect on the rain date of July 3, 1994 at the same times.

(c) *Regulations.*

(1) While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove unless authorized by the COTP or the COTP representative on-scene.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: May 24, 1994.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–13803 Filed 6–6–94, 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 946

Addition of the Delegate of the Chief Postal Inspector for Disposition of Abandoned Property

AGENCY: United States Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service regulations by making clear that the Chief Postal Inspector can delegate the authority to dispose of abandoned property.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Postal Inspector-Attorney Frederick I. Rosenberg, (202) 268–5477.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning the disposition of stolen mail matter and property acquired by the Postal Inspection Service for use as evidence are published in title 39 of the Code of Federal Regulations (CFR) as part 946. Section 946.11, disposition of property declared abandoned, is amended to authorize the Chief Postal Inspector to delegate authority to approve the sharing of property declared abandoned with federal, state, or local law enforcement agencies. This will make section 946.11 consistent with the other sections of part 946.

List of Subjects in 39 CFR Part 946

Claims, Law enforcement, Postal Service.

Accordingly, 39 CFR part 946 is amended as set forth below:

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401 (2), (5), (8), 404(a)(7), 2003, 3001

2. Section 946.11 is revised to read as follows:

§ 946.11 Disposition of property declared abandoned.

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Postal Inspection Service with federal, state, or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of the abandoned property are to be shared with other law enforcement agencies, such cash or proceeds shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003. The authority to make this determination may be delegated by the Chief Postal Inspector.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94–13724 Filed 6–6–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL–4892–3]

Extension of Date for Submission of Part A Permit Applications for Facilities Managing Ash From Waste-to-Energy Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of permit application deadline.

SUMMARY: In *City of Chicago v. Environmental Defense Fund, Inc.*, No. 92–1639 (___ U.S. ___; decided May 2, 1994), the Supreme Court held that ash generated by certain municipal waste-to-energy facilities that burn household wastes alone or in combination with nonhazardous wastes from industrial and commercial sources is not exempt from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). When the decision takes effect, persons who generate such ash will need to determine whether it is a hazardous waste under Subtitle C of RCRA. Ash that is hazardous will need to be managed in compliance with all applicable hazardous waste regulations.

In response to the Court's decision, EPA is today announcing that there has been substantial confusion as to when the owners and operators of facilities managing such ash were required to file applications for RCRA hazardous waste permits. EPA is exercising its authority under 40 CFR 270.10(e)(2) to extend the deadline for filing permit applications

EPA also is announcing today that it considers ash from these combustion facilities to be a newly identified waste for purposes of the land disposal restrictions under sections 3004(d)-(m) of RCRA. Current land disposal restrictions do not apply. Rather, the Agency has a duty to promulgate ash-specific restrictions 6 months from the date of today's document. All other hazardous waste regulations will apply to hazardous ash when the decision takes effect.

EFFECTIVE DATE: June 7, 1994.

ADDRESSES: Docket Clerk, OSW (OS-305), Docket No. F-94-XAPN-FFFFF, U.S Environmental Protection Agency Headquarters, 401 M Street SW., Washington, D.C. 20460. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this Notice, contact Scott Ellinger, Office of Solid Waste (5306), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I Authority
II Background
A. Overview
B. Nature of Ash From Waste-To-Energy Facilities
III Extension of Permit Deadline Due to Substantial Confusion
A. Permit Requirements and Deadline Extensions
B. Regulatory History of Waste-To-Energy Ash
C. Findings
IV Land Disposal Restrictions
V Other Subtitle C Requirements
VI State Authorization and Implementation
A. Permit Deadline Extension
B. Land Disposal Restrictions
VII. Good Cause Finding
VIII. Regulatory Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Authority

These actions interpreting the hazardous waste regulations in 40 CFR parts 260-271 are being taken under the authority of sections 2002, 3004, 3005 and 3006 of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6924, 6925, and 6926).

II. Background

A. Overview

On May 2, 1994 the Supreme Court issued an opinion interpreting Section 3001(i) of the Resource Conservation and Recovery Act (RCRA), 42 USC 6921(i). *City of Chicago* v. *EDF*, No. 92-1639 (____ U.S. ____, decided May 2, 1994). The Court held that this provision does not exempt ash generated at resource recovery facilities burning household wastes and nonhazardous commercial wastes (hereafter "waste-to-energy facilities") from the hazardous waste requirements of Subtitle C of RCRA. The Court also held that Section 3001(i) terminated a 1980 regulatory exemption for ash generated at waste-to-energy facilities that burn only household wastes. The opinion requires EPA to revise its prior position that both types of ash were exempt from hazardous waste regulation. It abruptly ends nearly a decade of controversy over the regulatory status of ash from these facilities.

As a result of this decision, ash from waste-to-energy facilities has the same status as other solid wastes. Persons who generate such wastes must determine whether that waste is a hazardous waste under EPA's hazardous waste identification rules at 40 CFR part 261. Since EPA has not listed ash as a hazardous waste, generators must determine whether ash exhibits any of the characteristics of hazardous waste at 40 CFR 261.21-.24. Ash that exhibits a characteristic must be managed in compliance with Subtitle C requirements.

As explained below, the regulatory status of ash has been the subject of confusion for several years. EPA's action today responds by giving owners and operators of facilities that manage ash that is determined to be characteristically hazardous a reasonable opportunity to obtain interim status by applying for a RCRA hazardous waste permit. Without this opportunity, persons managing hazardous ash would be out of compliance with RCRA's permit requirements and face potentially significant civil and criminal penalties.

In this notice EPA is also announcing that it will consider ash that is characteristically hazardous to be a "newly identified" waste under the land disposal restrictions. EPA needs time to determine what treatment standards would be appropriate. By considering such ash to be a newly identified waste under the land disposal restrictions, EPA will have an opportunity to evaluate the efficacy of the existing standards and, if necessary, develop new ash-specific standards.

EPA notes that all other applicable Subtitle C regulations will apply to ash on the date that the Court's decision takes effect. See the discussion of state authorization below for assistance in determining when the Court's decision will affect particular facilities. The Agency interprets the Court's decision to cut-off the exemption for waste management at waste-to-energy facilities at the point that ash is generated. Subsequent management of hazardous ash on-site is subject to regulation under Subtitle C.

B. Nature of Ash From Waste-to-Energy Facilities

Combustion of municipal solid waste, particularly through waste-to-energy facilities, can be an important component of a local government's waste management practices. As of 1990, approximately 196 million tons of municipal solid waste were generated annually in the U.S., 16 percent of which (32 million tons) was combusted. The states with the greatest municipal waste combustion capacity are Florida, New York and Massachusetts. There are approximately 150 municipal waste combustors in the U.S., 80 percent of which are waste-to-energy facilities. The remaining 20 percent incinerate waste without recovering energy.

Approximately 25 percent (by weight) of the waste that is combusted remains as ash, amounting to around eight million tons of municipal waste combustor ash generated annually. Generally, these combustion facilities generate two basic types of ash—bottom ash and air pollution control residuals, commonly referred to as "fly ash." Bottom ash collects at the bottom of the combustion unit and comprises approximately 75-80% of the total ash. Fly ash collects in the air pollution control devices that "clean" the gases produced during the combustion of the waste and comprises around 20-25% of the total. Based on several analytical studies, fly ash generally contains the highest concentrations of inorganic chemical constituents.

Studies also show that ash (usually fly ash) has sometimes exhibited EPA's

Toxicity Characteristic ("TC"). Typically, ash that "fails" the TC leaches lead or cadmium above levels of concern. Because a number of factors can influence whether ash passes or fails the TC (e.g., the nature of the incoming waste stream, the type of combustion unit, the nature of the air pollution control device and the ash sampling location), EPA cannot predict an overall failure rate for ash from municipal waste combustors.

III. Extension of Permit Deadline Due to Substantial Confusion

A. Permit Requirements and Deadline Extensions

RCRA requires any person treating, storing or disposing of hazardous waste to obtain a permit or a pre-permit authorization called "interim status." Section 3005; 40 CFR 2[illegible].1(b). To qualify for interim status a facility must meet criteria set out in RCRA section 3005(e), which include filing a permit application.

When EPA promulgates RCRA rules subjecting a new group of facilities to hazardous waste permitting requirements, the permit regulations provide 6 months for the filing of part A of the permit application. 40 CFR 270.10 (e). EPA routinely publishes in the **Federal Register** the specific permit deadline for persons regulated by the new rules. See 270.10 (e), note. Section 270.10(e)(2) provides that EPA can extend the date for permit applications by **Federal Register** notice if it finds that there has been "substantial confusion" as to whether the owner or operator was required to file a permit application and the confusion was due to ambiguities in EPA's regulations. For the reasons explained below, EPA today is exercising its discretion to extend the submission dates for part A permit applications for facilities treating, storing and disposing of ash from waste-to-energy facilities that exhibits a characteristic of hazardous waste.

B. Regulatory History of Waste-to-Energy Ash

In 1980, EPA promulgated a rule exempting household wastes from all RCRA requirements for hazardous wastes. 40 CFR 261.4(b)(1). EPA interpreted this exemption to extend to residuals from the treatment of household wastes, including ash from the combustion of household wastes. The exemption, however, did not address ash from the combustion of household wastes combined with nonhazardous commercial and industrial wastes.

In 1984 Congress added to RCRA a new Section 3001(i), entitled "Clarification of Household Waste Exemption." This provision addressed waste-to-energy facilities burning household wastes and nonhazardous commercial and industrial wastes to produce energy. In July 1985, EPA promulgated a rule that codified this provision. In the preamble accompanying this rule, EPA announced that it interpreted the statute and the rule to exempt the facilities—but not their ash—from Subtitle C, 50 FR 28702, 28725–26 (July 15, 1985). EPA did not publish any statement informing owners of facilities managing ash of any deadline for obtaining RCRA permits.

In the late 1980's, various EPA officials began taking the position that Section 3001(i) could be interpreted to exempt ash from Subtitle C. They also expressed the opinion that ash could be managed safely in nonhazardous waste disposal facilities. The Environmental Defense Fund (EDF) filed citizen suits in two separate U.S. District Courts to enforce the 1985 interpretation of the statute against two specific waste-to-energy facilities. *EDF* v. *City of Chicago*, 727 F. Supp. 419 (N.D. Ill. 1989); *EDF* v. *Wheelabrator Technologies, Inc.*, 725 F. Supp. 758 (S.D.N.Y. 1989). Both courts held that Section 3001(i) exempted ash. On appeal, the Second Circuit ruled in favor of the exemption, but the Seventh Circuit reversed, finding that the statute did not exempt ash. *EDF* v. *City of Chicago*, 948 F.2d 345 (7th Cir. 1991); *EDF* v. *Wheelabrator Technologies, Inc.*, 931 F.2d 211 (2d Cir. 1991), cert. denied 112 S.Ct. 453 (1991). The City of Chicago, which operated the facility adversely affected by the 7th Circuit's decision, appealed to the Supreme Court.

Also in the late 1980's, Congress considered a number of bills that would have explicitly exempted ash from Subtitle C requirements. In November 1990, Congress enacted an uncodified amendment to the Clean Air Act prohibiting EPA from regulating ash as a hazardous waste under Section 3001 of RCRA for a period of two years. Clean Air Act Amendments of 1990, Pub.L. No. 101–549, 104 Stat. 2399.

In response to these events, a number of states authorized to implement Subtitle C programs in lieu of EPA began treating ash from waste-to-energy facilities as exempt. Some interpreted their own regulations virtually identical to Section 3001(i). Others promulgated specific ash exemptions. Many of these specific exemptions were accompanied by detailed regulations for the management of ash as a nonhazardous waste. Consistent with the evolving federal position on the regulation of ash, EPA took no action affecting these state programs.

Finally, in September 1992, just before the expiration of the Clean Air Act ash "moratorium," EPA Administrator William Reilly signed a memorandum announcing that the Agency now interpreted Section 3001(i) to exempt ash from waste-to-energy facilities burning household wastes and nonhazardous wastes from Subtitle C requirements. This memorandum also announced that EPA believed that ash could be disposed of safely in landfills meeting new standards for municipal solid waste facilities promulgated in 1991 and codified at 40 CFR part 258.

C. Findings

EPA finds that the events above have created substantial confusion about the status of ash under the rule EPA wrote to codify the exemption in Section 3001(i). Although EPA's 1980 and 1985 preambles indicated that there was no exemption for ash from combined sources, later events suggested that ash was not regulated. Persons may have relied on the two District Court decisions, the 1990 ash moratorium, or the 1992 Reilly memorandum to conclude that Section 3001(i) and 40 CFR 261.4(b)(2) were ambiguous about the status of ash from combined sources. They could quite reasonably have concluded that they could manage ash from combined sources without obtaining hazardous waste permits. If EPA did not act to extend the Part A deadline, however, these facilities would be unable to obtain interim status because the Court's action is not a statutory or regulatory change establishing a new period for obtaining interim status under RCRA section 3005(e). Such facilities would have to cease handling hazardous ash until EPA took final action on their completed permit applications—a process that typically takes several years.

Section 270.10(e)(2) was written to prevent such harsh results. EPA is today invoking its authority to provide a reasonable opportunity for persons managing combined ash to satisfy RCRA's permitting requirements. Applying the substantial confusion approach to facilities managing this ash is consistent with previous precedents. See, e.g., 52 FR 34779–81 (Sept. 15, 1987) (notice of substantial confusion for big city cement kilns).

Persons handling ash from the combustion of 100% household waste could have relied with even greater justification on the Agency's 1980 interpretation of the household waste

exemption to handle such waste without a hazardous waste permit. They are also entitled to an opportunity to satisfy the permit requirement. Since they are becoming subject to Subtitle C without the enactment of a statute or the promulgation of a rule, they do not technically qualify for the normal 6 months provided for persons newly subject to Subtitle C regulation. See section 40 CFR 270.10(e)(1). Section 270.10(e)(1)(ii), which provides 30 days for filing a Part A after a facility "first becomes subject to the [Subtitle C] standards" could apply to these facilities. EPA, however, interprets this provision to apply to facilities whose own actions subject them to Subtitle C rather than to facilities affected by regulatory events. (An example would be a generator that exceeded the small quantity generator month' waste generation limit.) See generally 45 FR 76630, 76633 (November 19, 1980). Consequently, EPA believes the "substantial confusion" approach is also appropriate for persons who manage 100% household waste. Moreover, it reduces confusion by establishing a single deadline for both types of ash from waste-to-energy facilities.

Accordingly, EPA today establishes that facilities that are handling hazardous ash from waste-to-energy facilities that wish to continue to do so may file Part A applications anytime before December 7, 1994. See the discussion of state authorization below for guidance on where to request and submit an application.

Another statutory requirement for obtaining interim status is the filing of any notification required under section 3010(a) of RCRA. Under section 3010, EPA may require all persons that handle hazardous wastes—including generators and transporters—to notify EPA of the location of their activities within 90 days of the promulgation of a new rule identifying additional characteristics or listing a waste. This provision does not literally apply because EPA is not promulgating or revising a rule. However, failure to satisfy it could cloud a facility's claim that it obtained interim status. In order to prevent this result, EPA is exercising its discretion to waive filing of section 3010 notifications by facilities managing ash from resource recovery facilities. EPA notes that persons who manage ash will be required to obtain EPA identification numbers in the near future. This process will furnish the information that the notifications would have provided.

IV. Land Disposal Restrictions

The RCRA land disposal restrictions (LDRs) prohibit land disposal of hazardous wastes unless those wastes are first treated to substantially reduce toxicity or mobility of the hazardous constituents in the wastes so as to minimize threats to human health and the environment. RCRA sections 3004 (d), (e), (g), (m). The restrictions specify dates on which particular groups of wastes are prohibited from land disposal unless they are treated. RCRA sections 3004 (d), (e), (g). For wastes which are "newly identified or listed" after November 8, 1984, EPA must promulgate treatment standards within 6 months of the date of identification or listing. RCRA section 3004(g)(4).

On June 1, 1990, EPA promulgated treatment standards for constituents in wastes identified as hazardous under the "EP toxicity" characteristic, the predecessor to the current TC. 55 FR 22520. The treatment standards for metal constituents are levels identical to the EP toxicity standards themselves. 40 CFR 268.41. (EPA notes that it must revise these standards under *Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992) (the "Third Third" decision).) Persons generating wastes that fail the current TC test must determine whether their TC wastes exceed these EP levels, and, if they do, comply with the treatment standards.

EPA, however, believes that ash from waste-to-energy facilities is "newly identified" for purposes of the land disposal restrictions. Although technically ash would be identified as hazardous under the existing TC rather than a new characteristic rule, the Supreme Court's decision is bringing ash into the Subtitle C system for the first time (for ash from 100% household waste) or returning it to the system after a period of uncertainty and actual legislative exemption (for ash from combined sources).

EPA dealt with a similar situation in a 1990 LDR rule. In that notice, EPA interpreted section 3004(g)(4) for mineral processing wastes brought into RCRA by a decision of the U.S. Court of Appeals for the District of Columbia Circuit holding that EPA had improperly considered them to be exempt from Subtitle C under the statute's "Bevill amendment". (The mineral processing wastes also sometimes exceed the TC and EP toxicity levels for metals.) In that notice, EPA explained that section 3004(g)(4) is ambiguous as to whether it applies to wastes brought into the system after 1984 due to regulatory reinterpretation. See 55 FR 22667 (June 1, 1990). EPA determined that it was preferable to read section 3004(g)(4) to include such wastes because that reading was more consistent with the policy goals that prompted Congress to establish a separate schedule for new wastes in the first place: the need to study such wastes separately to set appropriate treatment standards, and the established priority of subjecting older wastes to the land ban first. *Id.*

EPA also noted that, before it developed specific treatment standards for the newly-identified mineral processing wastes, the wastes could be regulated under existing treatment standards for EP toxicity metals. EPA determined that it would not be appropriate to apply those treatment standards, however, because it had not analyzed and tested the wastes to determine whether those standards would meet the statuary requirements of reduced toxicity and mobility. *Id.*

Ash from 100% household waste clearly fits this precedent. It, too, is being regulated under Subtitle C for the first time as the result of a court decision narrowing an Agency interpretation of an existing Subtitle C exemption. Further, as explained in more detail below, EPA needs to determine whether exiting EP toxicity treatment standards will meet land treatment standard requirements for this ash. Accordingly, EPA interprets section 3004(g)(4) to apply to this ash. EPA will not apply the current treatment standards for the EP toxicity characteristic to ash which is identified as hazardous under the TC. Section 3004(g)(4) will require EPA to promulgate treatment standards for this ash within 6 months of the date of this notice.

Ash from combined sources is not entering Subtitle C jurisdiction for the first time—it was not exempt under EPA's original household waste exemption, and was not originally viewed as exempt under section 3001(i). Nevertheless, EPA believes that it would be appropriate and consistent with the goals of the LDRs to view it as a newly identified waste under section 3004(g)(4). Section 3004(g)(4) is ambiguous as to wastes reentering Subtitle C after several years of confusion and two years of clear statutory exemption. Moreover, EPA has not studied ash to determine what treatment standards would meet the requirements of Section 3004(m) of RCRA, and in fact is reviewing what the appropriate treatment standards are for all of the wastes with metal constituents exhibiting the Toxicity Characteristic. 58 FR 48116 (Sept. 14, 1993). Congress priority scheme for land disposal restrictions directs EPA to promulgate standards for post-1984 wastes in chronological order. If EPA were required to immediately determine

whether the current EP toxicity standards for ash were appropriate, it would have to postpone work on treatment standards for new listings and a new characteristic promulgated several years prior to the *City of Chicago* decision. Additionally, EPA needs time to determine whether current treatment standards are appropriate for ash.

For these reasons, EPA will also consider ash from combined sources to be newly identified for purposes of the land disposal restrictions. Furthermore, it will not apply the existing treatment standards for EP toxicity. As a result of this decision, Section 3004(g)(4) requires EPA to promulgate treatment standards for combined ash within 6 months of the date of this notice.

V. Other Subtitle C Requirements

EPA is not extending compliance dates for any other aspect of the hazardous waste regulations. Facilities generating, transporting, or treating, storing or disposing of hazardous ash must, as a matter of federal law, comply with the substantive requirements of 40 CFR parts 260–270 on the effective date of the Court's decision. (See the discussion of state authorization below to determine when the decision takes effect under authorized state RCRA programs.) EPA reminds generators, transporters and treatment, storage and disposal facilities that they must promptly obtain EPA identification numbers. See, e.g., 40 CFR 262.12. EPA intends to issue an implementation strategy in the near future that will provide additional information on complying with other RCRA requirements.

To facilitate compliance with Subtitle C, EPA has developed draft guidance for the sampling of ash from waste-to-energy facilities. EPA has already released this draft. Interested parties may obtain a copy by calling the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is (703) 920–9810, TDD (703) 486–3323. EPA soon will publish a separate Federal Register notice requesting comment on the draft.

EPA notes that by following certain waste management practices, some facilities may not need interim status or a RCRA permit. For example, under federal regulations, generators of hazardous ash may accumulate and treat ash onsite in tanks or containers for up to 90 days without obtaining hazardous waste permits under 40 CFR 262.34. See also 51 FR 10186 (May 24, 1986.)

VI. State Authorization and Implementation

A. Permit Deadline Extension

1. General Principles

Section 3006(b) of RCRA allows states to obtain authorization to implement state hazardous waste programs in lieu of federal law. To obtain authorization, a state must show that its program is equivalent to the Federal program. EPA interprets this requirement to mean that state laws and rules must be no less stringent than federal requirements. Section 3009, however, expressly allows states the option of establishing more stringent requirements.

Forty-eight states and territories are now authorized for all of the RCRA requirements established prior to November 1984 (the RCRA "base program"). In these states, the state's definition of hazardous waste—including any exemptions—operates in lieu of the federal definition. Changes to the federal definition do not automatically revise independently promulgated state regulations. Rather, the states are required to revise their programs and submit the revisions to EPA for approval. The revision does not take effect under federal law until EPA approves the revision. As explained below, in a few of these states, the Court's decision may not take effect on its federal law effective date. EPA believes that there are very few states in this category.

Where the Court's decision does eliminate an exemption for ash, the hazardous waste characteristic most likely to apply to ash is the TC as determined by the Toxicity Characteristic Leaching Procedure ("TCLP") promulgated by EPA in 1990. This rule was promulgated under one of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Section 3006(g) provides that rules promulgated under HSWA take effect in all states at the same time, displacing state rules unless the state rules are more stringent. EPA implements the new HSWA rule until the state adopts an equivalent provision, submits it to EPA, and obtains EPA approval. 50 FR 28728–30. (July 15, 1985). The TC and TCLP displaced the 1980 EP toxicity characteristic and leaching procedure. The EP, however, also remains in effect as a matter of state law in many states.

Sixteen states are now authorized for the TC and TCLP (see list in Table 1). EPA continues to implement the TC and the TCLP in the remaining states. EPA takes the position that, where it implements the TC, it uses federal permitting procedures. Consequently, EPA will implement the permit deadline extension announced today in all states where it implements the TC. Owners and operators in those states would file Part A applications with EPA Regional Offices. (See list in Table 2.) Where a state has been authorized to implement the TC, however, state permit procedures are in effect. Today's deadline extension is not in effect in those states. Moreover, since the extension makes permit requirements less stringent, states are not required to adopt equivalent extensions. If any of these states chooses to provide equivalent relief, owners and operators would file permit applications with the state agency.

To summarize, in order to determine the impact of today's action, persons handling ash must determine (1) the impact of the Court's decision on the RCRA program in each state (primarily an issue of whether a state's base program contains an *authorized* exemption for ash) and (2) whether the entity authorized to implement the TC and TCLP has extended its permit deadline.

2. Application of Principles: Status of Court Decision and Permit Exemption in Individual States

a. Unauthorized states. In the eight states and territories where EPA implements all portions of the RCRA program (see Table 1 for a list of these states and territories), including the base program, the Court's decision will eliminate EPA's interpretative ash exemption on the opinion's effective date. Since EPA implements the TC, the permit deadline extension will take effect today. Owners and operators of facilities who wish to obtain interim status to manage hazardous ash may file Part A applications with EPA Regional Offices. (See list in Table 2.)

b. Authorized states. The issues in authorized states are very complex. Table 3 summarizes the status of the decision and the permit deadline for major categories of states. This text presents a few explanatory notes.

Table 1.—List of States and Territories Without RCRA Subtitle C Base Program Authorization

Wyoming
Hawaii
Alaska
Iowa
Puerto Rico
Virgin Islands
American Samoa
Northern Mariana Islands

List of States and Territories Authorized for the Toxicity Characteristic

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee
Minnesota
Arkansas
Texas
Arizona
California
Guam
Nevada
Idaho

Table 2.—U.S. EPA Regional Contacts for the Part A Permit Application

U.S. EPA Region 1, RCRA Support Section, JFK Federal Building, Boston, MA 02203–2211, (617) 573–5750, CT, ME, MA, NH, RI, VT

U.S. EPA Region 2, Air and Waste Management Division, Hazardous Waste Facilities Branch, 26 Federal Plaza, room 1037, New York, NY 10278, (212) 264–0504, NJ, NY, PR, VI

U.S. EPA Region 3, RCRA Programs Branch (3HW50), 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–8116 (PA, DC), (215) 597–3884 (VA, WV, DE, MD), DE, DC, MD, PA, VA, WV

U.S. EPA Region 4, Hazardous Waste Management Division, RCRA Permitting Section, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3433, AL, FL, GA, KY, MS, NC, SC, TN

U.S. EPA Region 5, RCRA Activities, P.O. Box A3587, Chicago, IL 60690 (Call State Offic , IL, IN, MI, MN, OH, WI

U.S. EPA Region 6, Hazardous Waste Management Division, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–8541, AR, LA, NM, OK, TX

U.S. EPA Region 7, RCRA Branch, Permitting Section, 726 Minnesota Avenue, Attn: WSTM/RCRA/PRMT, Kansas City, KS 66101, (913) 551–7654, IA, KN, MO, NE

U.S. EPA Region 8, Hazardous Waste Management Division, 999 18th Street, Suite 500, Denver, CO 80202–2405, (303) 294–1361, CO, MT, ND, SD, UT, WY

U.S. EPA Region 9, Hazardous Waste Management Division, Attn: H–2–3, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2098, AZ, CA, HI, NV, AS, GU, No. Mariana Is.

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TABLE 3.—PERMIT DEADLINE: IMPLEMENTATION IN AUTHORIZED STATES

State has no ash exemption	State has unauthorized ash exemption	State has authorized ash exemption
TC Authorization: EPA [1]		
1. Court decision in effect	1. Court decision in effect	1. Decision may not be in effect (state law issue).
2. No deadline extension needed	2. Deadline extension in effect	2. Deadline extension not in effect. EPA will extend deadline when it approves program revision.
3. No state program revision needed	3. State must revise state law and inform EPA informally. 4. Owners/operators file notifications and Part A's with EPA Regional Office.	3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii). 4. Owners/operators file notifications and Part A's with EPA Regional office.
TC Authorization: State		
1. Court decision in effect	1 Court decision in effect	1. Decision may not be in effect (state law issue).
2. No deadline extension needed	2. Deadline extension not in effect. State may provide equivalent relief.	2. Deadline extension not in effect. State may provide equivalent relief when it eliminates exemption.
3. No state program revision needed	3. State must revise state law and inform EPA informally. 4. Owner/operators file with State if State grants relief.	3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii). 4. Owner/operators file with State if State grants relief.

[1] Note: EP toxicity characteristic may still be in effect under state law. States that have ash exemptions may determine whether they want to provide similar relief for EP permitting deadline.

(i) States with no ash exemption.

Since states may maintain more stringent RCRA programs, some states may never have exempted ash from hazardous waste requirements. The *City of Chicago* decision has no impact in these states. No permit deadline extensions are needed.

(ii) States with unauthorized ash exemptions.

EPA knows that, during the years of confusion over the status of ash, some states exempted ash from their Subtitle C programs. Most of these states, however, did not submit these provisions to EPA for authorization reviews. Although they arguably may have made the state programs less stringent than the federal program, EPA would have taken no action to force the states to eliminate them.

(A) Effect of court's decision.

Some of these states adopted provisions resembling 3001(i) and interpreted them to exempt ash. Whether the *City of Chicago* decision requires these states to abandon these interpretations is an issue of state law that can be answered authoritatively only by state officials.

Other states promulgated rules under their solid waste authorities that established ash-specific management standards that implicitly—or explicitly—transferred ash management from their hazardous waste programs to their solid waste programs. The status of these provisions is again an issue of state law.

(B) Effect of today's deadline extension.

Since the state never obtained authorization for its exemption for ash, its authorized program still regulates ash as a hazardous waste. The regulated

community, however, could have been confused about the status of ash, so the relief provided by the deadline extension would be appropriate. Whether or not the extension is in effect, however, depends on which entity is authorized to implement the TC. As explained above, where EPA implements the TC, it will apply today's notice. Where states implement the TC, today's notice cannot operate to revise state permit rules. The state would need to determine whether it wanted to provide equivalent relief.

(C) Requirements for program revision.

As a result of the court's decision, states with unauthorized ash exemptions now have state law requirements that are less stringent than the federal Subtitle C program. EPA is today notifying those states that they must revise their laws and regulations to eliminate the less stringent provisions. Although EPA is not today initiating any withdrawals of state programs, it advises states to take timely action to eliminate their ash exemptions. Since these provisions are not part of states' authorized RCRA programs, no Subtitle C program revisions will be necessary. Rather, EPA advises states to notify Regional Offices informally by letter when they have eliminated their exemptions.

(D) Where to file Part A applications.

Where EPA implements the TC, owners and operators must file Part A applications with the appropriate EPA Regional Office.

Where a state that is authorized to implement the TC decides to extend the filing deadline, owners and operators must file with the state hazardous waste agency.

(iii) States with authorized ash exemptions.

EPA may have authorized a few ash exemptions during the late 1980's and early 1990's. EPA has not found any such authorization during a limited review prior to the publication of this emergency notice. Consequently, EPA believes that there are very few states in this category. Nevertheless, in case such states exist, EPA is explaining their obligations.

(A) Effect of court decision.

Whether or not the decision affected the state law or rule that EPA authorized is a state law issue. State officials will need to make that determination. If a state determines that its state provision is still in effect, both the state law and the authorized RCRA program will continue to exempt ash until such time as the state revises its program and obtains EPA approval for its revision.

(B) Effect of today's permit deadline extension.

If ash is still exempt under both state law and the authorized program, no permits are currently required. Today's filing date extension would not take effect. As explained in (D.) below, in some cases EPA will announce an extension when it approves a revision eliminating an ash exemption.

(C) State program revisions.

Where ash exemptions remain in effect, state programs will be less stringent than the federal program. Formal state program revisions, including notice and comment rulemaking, will be required under 40 CFR 271.21(e)(2)(ii). The deadline for these revisions will be July 1, 1995 under 40 CFR 271.21(e)(2)(ii). An additional year is available where states must make statutory changes. 40 CFR 271.21(e)(2)(v).

(D) Where to file Part A applications.

At the time that the state receives EPA authorization for the revision that eliminates its ash exemption, if EPA is still implementing the TC, it will make a finding of substantial confusion and extend the Part A deadline for that state. Owners and operators desiring interim status will need to file applications with the appropriate EPA Regional Office. EPA will not be able to provide this relief where a state is authorized to implement the TC. Those states must determine whether they want to extend permit deadlines. If they do, owners and operators wishing to obtain interim status will need to file applications with the appropriate state agency.

B. Land Disposal Restrictions

The LDRs are HSWA rules initially implemented by EPA. Moreover, EPA has established that it will not delegate its authority to set treatment standards to states. EPA views determinations linked to the need for and scope of treatment standards as similarly nondelegable. This includes today's interpretation that ash from waste-to-energy facilities is a newly identified waste under section 3004(g)(4). This interpretation is effective in all states, including those authorized to implement the delegable portions of the land disposal restrictions.

VII. Good Cause Finding

Section 270.10(e)(2) does not require notice and comment rulemaking for substantial confusion notices. Rather, it simply requires EPA to publish a "notice" in the **Federal Register**. To the extent that this notice is a rulemaking for the purposes of section 553 of the Administrative Procedure Act (APA), EPA believes that it has "good cause" under section 553(b)(3)(B) of the APA to extend the permit application deadline without prior notice and opportunity for comment. First, EPA believes that its determination regarding the existence of regulatory confusion is an "interpretative rule" for which notice and comment is not required under section 553(b)(3)(A) of the APA. It clarifies and explains existing law rather than creating new duties. Moreover, the establishment of a due date for Part A permit applications is a procedural rule also exempt from notice and comment under section 553(b)(3)(A) of the APA. The effect of establishing this new date is that EPA will not take enforcement action for operation without a RCRA permit against a facility that submits its application in compliance with this notice and that meets the other conditions of RCRA section 3005(e). Finally, EPA views the issues of whether confusion existed and whether it was "substantial" as subjects on which comment would not be useful and would not serve the public interest.

EPA's findings concerning the land disposal restrictions are also "interpretative rules" exempt from notice and comment requirements. They provide EPA's views on the scope of section 3004(g)(4) of RCRA. Moreover, EPA would have good cause to eliminate notice and comment even if these determinations are regarded as legislative rules. The land disposal restrictions would take effect for ash approximately 25 days after the Court issued its opinion. It would be impossible for facilities managing ash to come into compliance with the restrictions in that short time. See 55 FR 22521 (June 1, 1990) (Third Third LDR rule—EPA provides 90 days for persons managing wastes subject to new treatment standards to come into compliance.) The Court's decision thus creates an emergency justifying use of the "good cause" exemption under section 553(b)(3)(B) of the APA.

VIII. Regulatory Requirements

A. Executive Order 12866

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it involves novel policy issues arising out of legal mandates. However, OMB waived review of this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires the Agency to prepare and make available for public comment, a regulatory flexibility analysis that describes the impact of a

proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The ruling of the Supreme Court in *City of Chicago* v. *Environmental Defense Fund, Inc.* will result in additional costs for waste management facilities and some of those costs will be borne by small entities. The Agency does not have estimates of those costs. Today's rule extends the date by which affected facilities must submit a Part A permit application. This action will lower the costs to small entities that will have to comply with the Court's ruling. Therefore, pursuant to 5 U.S.C. 605b, I certify that this regulation will not have a substantial impact on small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2050–0009; 2050–0120; 2050–0028; 2050–0034; 2050–0039; 2050–0035 ; 2050–0024.

This collection of information has an estimated average burden per respondent as stated below:

OMB No.	Title	New respondents	Average burden (hours)	Total additional burden (hours)
2050–0009	Part B Permit Application	6	242	1457
2050–0120	General Facility Standards	6	91	547
2050–0028	Notification (for EPA ID)	62	4.35	270
2050–0034	Part A Permit Application	68	72	4903
2050–0039	Hazardous Waste Manifest	2	1.8	22
2050–0035	Generator Standards	62	1.1	68
2050–0024	Biennial Report	62	20	1240

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: May 27, 1994.

Carol M. Browner,

Administrator

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Amdt. 195–51]

RIN 2137–AB 46

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule provides that operators may not transport a hazardous liquid in a steel interstate pipeline constructed before January 8, 1971, a steel interstate offshore gathering line constructed before August 1, 1977, or a steel intrastate pipeline constructed before October 21, 1985, unless the pipeline has been pressure tested hydrostatically according to current standards or operates at 80 percent or less of a qualified prior test or operating pressure. In addition, this final rule creates a comparable requirement for carbon dioxide pipelines constructed before July 12, 1991, except for production field distribution lines in rural areas. The purpose of this final rule is to ensure that the affected pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is essential to prevention of particular kinds of pipeline accidents.

EFFECTIVE DATES: The changes to part 195, except § 195.306(b), take effect July 7, 1994. The final rule under § 195.306(b) takes effect August 8, 1994, unless RSPA receives, by July 7, 1994, comments that illustrate that disallowing the use of petroleum as a test medium for pressure testing required by this rulemaking is not in the public interest. Upon receipt of such comments, RSPA will publish a document in the **Federal Register** withdrawing the final rule under § 195.306(b).

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and amendment number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366–2392, regarding the subject matter of this final rule document, or Dockets Unit (202) 366–4453, for copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Any steel pipeline may contain hidden physical defects that result from the manufacture or transportation of pipe and from pipeline construction. Over the operational life of the pipeline, new physical defects can be created by external forces acting on the pipeline. When a physical defect is large enough, it can cause the pipeline to fail during operation. Also, during pipeline operation, internal or environmental stresses can cause smaller defects to grow and become large enough to cause the pipeline to fail.

Adequate pressure testing can disclose hidden physical defects in a pipeline. Pressure testing involves raising a pipeline's internal pressure above its maximum operating pressure (MOP) for a time sufficient for leaks to develop from defects. A test that is adequate in pressure level and duration will disclose physical defects that are large enough to cause pipeline failure